

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of 23.16.209, 23.16.401,)	ON PROPOSED AMENDMENT
23.16.406, 23.16.410, 23.16.1101,)	
23.16.1224, 23.16.1225, 23.16.1231,)	
and 23.16.3103 concerning display of)	
antique illegal gambling devices, dealer)	
license application process, temporary)	
dealer licenses, possession of dealer)	
license, card game tournament rules,)	
card dealer restrictions, house player)	
restrictions, rake restrictions, and casino)	
night requirements)	

TO: All Concerned Persons

1. On May 31, 2007, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 25, 2007, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

23.16.209 DISPLAY OF ILLEGAL GAMBLING DEVICES AND ANTIQUE
SLOT MACHINES ILLEGAL GAMBLING DEVICES (1) If an illegal gambling device as defined in 23-5-112, MCA, ~~or an antique slot machine~~ is displayed in a public place other than a museum, it must be:

(a) through (b)(ii) remain the same.

(2) A licensed gambling operator shall notify the department in writing before displaying an illegal gambling device or an antique illegal gambling device on his the licensed premises.

(3) Except as provided in (4), public display of an antique illegal gambling device must comply with the requirements of (1).

(4) An antique illegal gambling device, as defined in 23-5-153, MCA, may be:

(a) displayed only and not operated in a public or private museum;

(b) possessed and operated for private use only in a private residential dwelling; or

(c) displayed only and not operated in a retail business establishment if the device is being offered for resale.

AUTH: 23-5-115, MCA

IMP: 23-5-152, 23-5-153, MCA

RATIONALE AND JUSTIFICATION: These proposed amendments generally conform the rule to the requirements of SB 540 which authorizes the possession and display of antique illegal gambling devices under circumstances similar to the prior law relating to possession and display of antique slot machines. The proposed amendment to (2) requires licensed gambling operators to notify the department prior to displaying either illegal gambling devices or antique illegal gambling devices on the licensed premises. New sections (3) and (4) are proposed to clarify the manner and means by which antique illegal gambling devices, as distinguished from nonantique illegal gambling devices, may be lawfully possessed and displayed, in compliance with SB 540.

23.16.401 APPLICATION FOR DEALER LICENSE (1) ~~The application for a dealer license must contain a temporary dealer license form which, when accompanied by a receipt for certified mail, will serve as a temporary dealer license pending the issuance of an annual dealer license.~~

~~(2) Applications for dealer licenses are available only at driver examination stations from a local gambling control office, local motor vehicle division office, or other public location designated by the department. At the time an application for a dealer license is obtained by an applicant, the~~ An applicant for a dealer license must appear in person and present photographic verifications of his identity to an authorized representative of the ~~driver services bureau~~ Motor Vehicle Division. The authorized representative of the ~~driver services bureau~~ Motor Vehicle Division must:

~~(a) record the verified identity of the applicant on the temporary dealer license form portion of the application and sign and date said form;~~

~~(b) assign an identification number to the applicant and record this number in the proper locations on the application;~~

~~(c) obtain a photograph of the applicant utilizing the assigned identification number in a manner which will identify the applicant for future issuance of an annual dealer license as described by these rules; and~~

~~(d) receive a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement.~~

(b) provide a card dealer application packet which shall include:

(i) Form 4, Montana card dealer application;

(ii) duplicate Forms FD-258 for two sets of fingerprints to be obtained and certified by a local law enforcement agency; and

(iii) Forms 1 and 10 for personal history statements.

(3) remains the same but is renumbered (2).

~~(4)~~(3) The application for a dealer license is incorporated in these rules by reference as Forms 4 and FD-258, as those forms read on ~~December 1, 2005~~ June 22, 2007, and are available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-308, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment to (1) deletes the current method of obtaining a temporary card dealer license directly from the license application form. To conform the rule to HB 190, the new process to obtain a temporary card dealer license is detailed in ARM 23.16.406. The proposed amendment also allows card dealer license application packets to be obtained from a Gambling Division field office or a Motor Vehicle Division representative. The proposed amendment corrects reference to Motor Vehicle Division from previously named Driver Services Bureau. Amendment to (3) is to reference current license application and fingerprint forms.

23.16.406 TEMPORARY DEALER LICENSE (1) A temporary dealer license application packet may be obtained by an applicant pursuant to these rules is valid only when attached to a receipt for certified mail which has been postmarked by the United States postal service at the time the application for dealer license is sent to the department from a local gambling control office, local Motor Vehicle Division office, or other public location designated by the department.

(2) An applicant for a temporary dealer license must first appear in person before an authorized representative of the Motor Vehicle Division and present photographic verification of applicant's identity. The authorized representative of the Motor Vehicle Division must obtain a photograph of the applicant.

(3) The applicant must then appear in person and submit to an investigator for the department:

- (a) a completed application;
- (b) payment of a first year license fee and fingerprint processing fees;
- (c) valid photo identification and social security card or birth certificate;
- (d) two complete sets of fingerprints obtained from and certified by a local law enforcement agency, the department, or a private security company approved by the department; and
- (e) verifiable evidence that the applicant has an offer of employment as a card dealer, or a reasonable prospect for employment as a card dealer, and that such employment is expected to commence within 14 days of making application.

(2) remains the same but is renumbered (4).

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

RATIONALE AND JUSTIFICATION: To conform the rule to HB 190, the proposed amendment to (1) deletes the current method of obtaining a temporary card dealer license directly from the license application form. The department is given authority

to adopt rules to implement temporary licensing of card dealers. Consistent with HB 190, these rules provide that temporary licenses may be obtained from a gambling division field office, or other public location designated by the department. Additionally, new section (2) is amended to provide that the applicant for a temporary license must have a photo taken by a motor vehicle representative. The proposed amendment to new section (3) requires the applicant to appear before a gambling investigator with a completed application, the necessary fees, identification, completed fingerprint cards, and verifiable evidence that the applicant has a reasonable prospect for employment within 14 days of making application.

23.16.410 POSSESSION OF DEALER LICENSE (1) remains the same.

(2) Every person in possession of a dealer license must ~~surrender~~ produce upon request such license to ~~for any player or peace officer of the State of Montana upon request~~ for the purpose of inspecting said license and identifying the licensee.

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment to (2) is intended to require a person in possession of a card dealer license to produce the license whenever requested by a player or peace officer for purposes of inspection of the license or identification of the licensee.

23.16.1101 CARD GAME TOURNAMENTS (1) Card game tournaments which involve consideration in order to play and the chance of winning something of value are gambling activities. Publicly played card game tournaments involving gambling activity are limited to the card games known as ~~bridge, cribbage, hearts, panguingue and, pinochle, pitch, poker, rummy, solo, and whist~~ as described by ARM 23.16.1202.

(2) through (4) remain the same.

(5)(a) ~~In a card game tournament involving card games other than panguingue or poker, a licensed dealer is not required to personally conduct the games. However, a designated person must be present on the premises to oversee the conduct of the games and settle disputes.~~

(b) In a card game tournament involving poker or panguingue, each card game must be conducted by a licensed dealer as required in 23-5-309, MCA. In addition, a designated person, who may be one of the licensed dealers, must be present on the premises to oversee the conduct of the games and settle disputes.

(6) remains the same.

(7) Under no circumstances may the total amount paid by an individual, including entry and reentry fees, exceed \$2,500 for tournament play.

(8) A card game tournament permitted under these rules may be part of a progressive card game tournament in which the ultimate prize is not awarded until completion of the final round of the progressive tournament.

(a) The tournament must be publicly identified as being part of a progressive tournament prior to initiation of the tournament.

(b) Each location that participates in the progressive tournament must obtain a card game tournament permit.

(c) If the tournament is part of a progressive tournament, prize(s) may include the right to participate in the higher level of tournament play, so long as the value of the higher level tournament is equal to the value of the expected top prize in the tournament.

(7) through (9) remain the same but are renumbered (9) through (11).

(12) For any card game tournament that is represented as a charitable tournament, no less than 50% of the total of all entry and reentry fees must be paid to charitable, educational, or recreational nonprofit organization(s).

(13) For each card game tournament, the location operator shall maintain for a period of 12 months and must provide to the department upon request a record of all entry fees and reentry fees paid by each participant. In addition, if the tournament was represented as a charitable tournament, the location operator shall also maintain for a period of 12 months, and provide to the department upon request, a record of the distribution of the tournament proceeds.

(14) No card game tournament may be part of a casino night.

(10) remains the same but is renumbered (15).

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-311, 23-5-317, MCA

RATIONALE AND JUSTIFICATION: The proposed amendments to (1) and (5) reflect statutory changes in HB 190 which provides that a permit for social card games is no longer required. The proposed amendment to new section (7) also reflects statutory changes in HB 190 which limits the maximum amount of money a person may pay for entry fees and reentry fees to participate in a card game tournament. Proposed amendments to new section (8) conform the rule to changes in HB 190 which makes clear that card game tournaments may be part of a progressive tournament where the ultimate winner is not known until completion of the final level tournament. The proposed amendment also requires that if the tournament is to be part of a progressive tournament, it must be so identified prior to start of the tournament, and clarified that the prize in a progressive tournament may be the right to participate in the higher level of tournament play, but that the value of that right must be equal to what would be the value of the top prize in the tournament. Proposed new section (12) implements HB 190 by requiring a minimum of 50% of entrance fees from charitable tournaments be paid to charities. The proposed amendments in new section (13) require maintenance of entrance fee records for card game tournaments, and records of the distribution of entrance fees to the charitable organizations. The proposed amendment in new section (14) clarifies that casino nights may not include card game tournaments.

23.16.1224 DEALER RESTRICTIONS (1) In authorized card games using licensed dealers, licensed dealers shall have no financial interest, directly or indirectly, in the outcome of any game which they deal.

(2) Except as provided in (3), card dealers shall receive no share of the rake and must be employees of the licensed operator or card room contractor.

(3) This rule does not prevent licensed operators or card room contractors who are licensed dealers from dealing their own games or receiving a share of the rake.

AUTH: 23-5-115, MCA
IMP: 23-5-311, 23-5-324, MCA

RATIONALE AND JUSTIFICATION: The proposed amendments of new section (2) and amendment of (3) serve to clarify that card dealers, unless they also have an ownership interest in the operator's license or the card room contractor's license, must be employees of the operator or card room contractor and may not share in, or have their wages or salary based on a percentage of the rake of a card game, since to do so constitutes an undisclosed and prohibited ownership interest in the license.

23.16.1225 HOUSE PLAYERS (1) and (2) remain the same.

AUTH: 23-5-115, 23-5-710, MCA
IMP: 23-5-311, 23-5-324, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment reflects the express authorization in HB 190 for the department to implement rules for the regulation of house players, or skills.

23.16.1231 RAKE (1) through (3) remain the same.

(4) A card dealer who has no interest in the operator's license or card room contractor's license may not receive a share of a rake.

AUTH: 23-5-115, 23-5-313, MCA
IMP: 23-5-311, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment to (4) clarifies that that card dealers may not share in the rake of a card game, because sharing the rake of a card game is prohibited as an undisclosed ownership interest in the license.

23.16.3103 GENERAL REQUIREMENTS (1) through (1)(i) remain the same.

(j) No card game tournament may be part of a casino night.

(j) remains the same but is renumbered (k).

AUTH: 23-5-715, MCA
IMP: 23-5-702, 23-5-705, 23-5-706, 23-5-710, 23-5-711, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment in new subsection (1)(j) clarifies that casino nights may not include card game tournaments.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than June 7, 2007.

5. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State April 30, 2007.